

Message Text

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PAGE 01 STATE 093501
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DRAFTED BY L/M:JHSMITH:MFM
APPROVED BY L/M:KEMALMBORG
JUSTICE - JOHN MARTIN

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FM SECSTATE WASHDC
TO AMEMBASSY MEXICO IMMEDIATE
INFO WHITE HOUSE IMMEDIATE -

C O N F I D E N T I A L STATE 093501

NODIS
FOR MINISTER THOMPSON FROM L/M SMITH AND JUSTICE MARTIN

E.O. 11652: X-GDS-2

TA : PFOR, MX

SUBJECT: LEE/BOYCE CASE
WHITE HOUSE FOR BRZEZINSKI
REF: MEXICO 4845

1. THIS TELEGRAM RESPONDS TO THE SUGGESTIONS RAISED IN REF AND ALSO TRANSMITS, AS YOU REQUESTED, THE TEXT OF A MEMORANDUM WHICH YOU CAN LEAVE WITH THE FOREIGN MINISTER. WE GREATLY APPRECIATED THE OPPORTUNITY TO MEET WITH YOU ON FRIDAY IN THE DEPT. TO DISCUSS THIS CASE. 4E HAVE DRAFTED THE FOLLOWING TEXT IN A WAY SO THAT IT MAY BE CONVEYED TO THE FOREIGN MINISTER IN ITS ENTIRETY. PLEASE FEEL FREE TO MAKE WHATEVER CHANGES YOU THINK ADVISABLE FOR PRESENTATION PURPOSES. ARA/MEX CONCURS IN TEXT.

2. BEGIN TEXT. WE DEEPLY APPRECIATE YOUR COOPERATION IN
CONFIDENTIAL

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PAGE 02 STATE 093501

ASSISTING IN THE PROSECUTION OF CHRISTOPHER JOHN BOYCE AND ANDREW DAULTON LEE. AS I AM SURE YOU KNOW, MY GOVERNMENT IS GRAVELY DISTURBED ABOUT THE CRIMES THEY ARE ALLEGED TO HAVE COMMITTED. IT APPEARS THEY MAY HAVE PROVIDED HIGHLY CLASSIFIED INFORMATION OF A TECHNICAL NATURE TO THE INTELLIGENCE SERVICE OF A THIRD COUNTRY FOR MONEY. THE INFORMATION THEY ARE ALLEGED TO HAVE PROVIDED COULD CAUSE ENORMOUS

HARM TO THE NATIONAL DEFENSE OF THE UNITED STATES AND ITS ALLIES.

3. YOUR COOPERATION IN THIS CASE HAS BEEN A MATTER OF GREAT SATISFACTION TO US FROM THE MOMENT IT WAS DISCOVERED THROUGH THE SKILL AND PROFESSIONAL COMPETENCE OF MEXICAN POLICE AUTHORITIES. IN THAT CONNECTION, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO EXPLAIN, IN SOME DETAIL, WHY IT IS SO CRITICAL THAT THE POLICE OFFICERS INVOLVED IN THE ORIGINAL ARREST OF MR. LEE APPEAR AND GIVE TESTIMONY IN HIS TRIAL IN LOS ANGELES.

4. WE UNDERSTAND THE DIFFICULTIES YOU PERCEIVE IN MAKING THESE OFFICERS AVAILABLE AND WE ARE GRATEFUL FOR YOUR SUGGESTION THAT THE OFFICERS GIVE TESTIMONY BY MEANS OF A DEPOSITION IN MEXICO. REGRETFULLY I MUST INFORM YOU THAT SUCH A PROCEDURE IS NOT POSSIBLE FOR TWO REASONS. FIRST, A 1975 CHANGE IN THE FEDERAL RULES OF CRIMINAL PROCEDURE, WHICH ARE APPLICABLE IN THIS CASE, REQUIRES THAT THE DEFENDANT, AND HIS LAWYERS, BE PRESENT AT THE TAKING OF DEPOSITIONS SO THAT THEY CAN CONFRONT THE WITNESS AND ASK QUESTIONS IN CROSS-EXAMINATION. THIS MEANS THAT WE WOULD BE REQUIRED TO BRING LEE, AND HIS LAWYERS TO MEXICO FOR THE DEPOSITION. TO DO THAT, WE WOULD HAVE TO GET PERMISSION FROM THE COURT, WHICH IS EXTREMELY UNLIKELY. SECOND, AND MORE IMPORTANTLY, THE RISKS ASSOCIATED WITH BRINGING LEE TO MEXICO ARE UNACCEPTABLY HIGH. THE MOMENT HE CROSSED THE U.S.-MEXICAN BORDER, THE UNITED STATES WOULD NO LONGER HAVE ANY JURISDICTION OVER HIM. WE WOULD BE POWERLESS TO MAINTAIN CUSTODY OR TO PREVENT AN ESCAPE

CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 093501

ATTEMPT. WHILE HE IS IN MEXICO, HIS LAWYERS WOULD SURELY FILE NUMEROUS MOTIONS WITH THE COURT SEEKING TO DECLARE THAT THE UNITED STATES NO LONGER HAD JURISDICTION OVER LEE AND THAT HE COULD NOT BE RETURNED TO THE UNITED STATES AGAINST HIS WILL. EVEN IF YOUR GOVERNMENT AGREED TO MAINTAIN CUSTODY OVER LEE AND TO RETURN HIM TO U.S. CUSTODY, IT IS THE CONVICTION OF OUR DEPT. OF JUSTICE THAT LEE'S LAWYERS WOULD BE ABLE TO FRUSTRATE THAT PROCESS ONCE LEE HAD LEFT THE UNITED STATES BY FILING VARIOUS MOTIONS WITH THE COURT ATTACKING THE VALIDITY OF THE PROCEDURE. THIS WOULD UNDOUBTEDLY REQUIRE THE EXTENDED PRESENCE OF LEE IN MEXICO WHILE THESE ISSUES WERE LITIGATED IN UNITED STATES' COURTS. ADDITIONALLY, THE PROBLEMS OF MAINTAINING SECURITY OVER LEE WOULD BE ENORMOUS. HE FACES A LIFE SENTENCE AND HAS NOTHING TO LOSE FROM A DESPERATE ACT AND, THERE WOULD BE CONSIDERABLE PRESS ATTENTION IN HIS TRAVEL TO MEXICO.

5. GIVEN THESE FACTS AND BEING AWARE OF YOUR CONCERNS, WE

HAVE SPENT A GREAT DEAL OF TIME TRYING TO DETERMINE IF SOME ALTERNATIVE SOLUTION COULD BE REACHED. UNFORTUNATELY, WE HAVE CONCLUDED THAT THERE IS NO ACCEPTABLE PROCEDURE

OTHER THAN THE APPEARANCE OF THE OFFICERS IN LOS ANGELES. AMONG THE SOLUTIONS WE HAVE REJECTED ARE THE TAKING OF DEPOSITIONS AT THE BORDER OR THE USE OF LIVE TELEVISION CAMERAS TO TRANSMIT THE OFFICER'S TESTIMONY TO THE COURTROOM. BOTH OF THE PROCEDURES ARE SO FROUGHT WITH LEGAL AND PRACTICAL DIFFICULTIES THAT WE HAVE BEEN FORCED TO REJECT THEM.

6. IT SHOULD BE HELPFUL FOR YOU TO KNOW THAT THE DEFENSE LAWYERS HAVE NOT BEEN SUCCESSFUL IN SHOWING ANY ILLEGALITY UNDER U.S. LAW IN THE ARREST, DETENTION, INTERROGATION AND DEPORTATION OF MR. LEE.

CONFIDENTIAL

CONFIDENTIAL

PAGE 04 STATE 093501

THEREFORE, AT THE LEE TRIAL THE MEXICAN POLICE OFFICERS WOULD BE QUESTIONED ONLY ON THE FACTS SURROUNDING THE ARREST OF LEE, THE REMOVAL FROM HIS PERSON OF ITEMS OF PHYSICAL EVIDENCE, AND THE MANNER OF RETENTION OF THESE ITEMS OF EVIDENCE. ALSO, THE PROSECUTING ATTORNEYS EXPECT LEE TO CLAIM THAT HE WAS MISTREATED BY THE MEXICAN AUTHORITIES. IF THE OFFICERS WERE TO APPEAR THEY WOULD BE ABLE TO REBUTT LEE'S FALSE ACCUSATIONS.

7. THE DEPT. OF JUSTICE INTENDS TO PROSECUTE LEE EVEN IF YOU ARE NOT ABLE TO AGREE TO MAKE THE POLICE OFFICERS AVAILABLE. HOWEVER, WITHOUT THEIR TESTIMONY THE CASE IS WEAKENED AND THE RISK OF ACQUITTAL INCREASES. IF HE IS ACQUITTED, A VERY SERIOUS CRIME WILL HAVE GONE UNPUNISHED AND HE WILL BE FREE TO GIVE OTHER GOVERNMENTS ANY INFORMATION HE MAY STILL HAVE BUT HAS NOT YET GIVEN THEM.

8. LEE'S TRIAL IS SCHEDULED TO BEGIN AS SOON AS BOYCE'S IS COMPLETED. THAT SHOULD BE THIS WEEK. BECAUSE OF THE SHORTNESS OF TIME, I MUST ASK FOR YOUR ANSWER AS SOON AS POSSIBLE. SHOULD YOU AGREE TO MAKE THESE POLICE OFFICERS AVAILABLE, WE WILL, OF COURSE, PAY ALL OF THEIR EXPENSES AND MAKE ALL THE NECESSARY ARRANGEMENTS.

9. I REALIZE THIS IS A DIFFICULT DECISION FOR YOUR GOVERNMENT TO MAKE AND I APOLOGIZE FOR THE CONFUSION THAT APPEARS TO HAVE SURROUNDED THE QUESTION AS TO WHETHER A DEPOSITION WOULD HAVE BEEN ADEQUATE- IN ANY EVENT, I HOPE THIS MEMORANDUM CLARIFIES OUR POSITION.

10. ON BEHALF OF THE UNITED STATES, I WANT TO THANK YOU
VERY MUCH FOR YOUR SPLENDID COOPERATION IN THIS CASE IN
THE PAST AND I SINCERELY HOPE YOU WILL BE ABLE TO CONTINUE
THAT COOPERATION BY MAKING THESE POLICE OFFICERS AVAILABLE
TO GIVE EVIDENCE IN THE TRIAL OF MR. LEE IN LOS ANGELES.
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PAGE 05 STATE 093501

END TEXT.
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